

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LEONEL HERNANDEZ,

Plaintiff,

v.

J. WELCH,

Defendant.

Case No.: 1:23-cv-01563 JLT SKO

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS**

(Doc. 10)

Leonel Hernandez seeks to hold J. Welch, a correctional sergeant at Kern Valley State Prison, liable for violations of his civil rights violations pursuant to 42 U.S.C. § 1983. The magistrate judge screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A(a) and found he states a cognizable claim against Defendant Welch for a threat to safety in violation of his rights arising under the Eighth Amendment. However, the magistrate judge determined Plaintiff did not state a cognizable claim for a violation of his First Amendment rights or "Damages to [his] Mental Health. (Doc. 8.) The magistrate judge granted Plaintiff the opportunity to cure the pleading deficiencies identified, or to notify the Court of his willingness to proceed only on the cognizable claim. (*Id.* at 9.) In response, Plaintiff indicated he "would like to proceed only on the Eighth Amendment threat to safety claim" and declined to amend. (Doc. 9.)

After Plaintiff filed his response, the magistrate judge issued Findings and Recommendations, reiterating the finding that Plaintiff stated a cognizable claim for "threat to

1 safety” and recommending the action proceed only on that claim. (Doc. 10.) The Court served
2 the Findings and Recommendations on Plaintiff and notified him that any objections were due
3 within 14 days. (*Id.* at 2.) The Court advised him that the “failure to file objections within the
4 specified time may result in the waiver of rights on appeal.” (*Id.*, citing *Wilkerson v. Wheeler*,
5 772 F.3d 834, 838-39 (9th Cir. 2014), *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).)
6 Plaintiff did not file objections, and the time to do so has passed.

7 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of this
8 case. Having carefully reviewed the matter, the Court concludes the Findings and
9 Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued March 5, 2024 (Doc. 10) are **ADOPTED**
11 in full.
- 12 2. This action **PROCEEDS** only on Plaintiff’s Eighth Amendment threat to safety claim
13 against Defendant Welch only.
- 14 3. All remaining claims in Plaintiff’s complaint are **DISMISSED**.
- 15 4. This matter is referred to the assigned magistrate judge for further proceedings.

16 IT IS SO ORDERED.

17
18 Dated: **March 25, 2024**


UNITED STATES DISTRICT JUDGE